

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANDREW R. MAY, Individually and On Behalf)
of All Others Similarly Situated,) Civil Action No. 1:07-cv-04819-CM

Plaintiff,

V.

TELIK, INC., MICHAEL M. WICK, CYNTHIA M. BUTITTA, UBS SECURITIES, LLC, LEHMAN BROTHERS HOLDINGS, INC., BEAR STEARNS & CO., INC., NEEDHAM & COMPANY, INC., LAZARD FRERES & CO., LLC, FORTIS SECURITIES, INC., and J.P. MORGAN SECURITIES, INC.,

Defendants.

KEVIN HENNESSY, Individually and On)
Behalf of All Others Similarly Situated,)
Case Action No. 1:07-cv-05707-CM

Plaintiff,

V.

TELIK, INC., MICHAEL M. WICK, CYNTHIA M. BUTITTA, UBS SECURITIES, LLC, LEHMAN BROTHERS HOLDINGS, INC., and J.P. MORGAN SECURITIES, INC.,

Defendants.

**MEMORANDUM OF LAW
IN FURTHER SUPPORT OF POLICEMEN'S
ANNUITY AND BENEFIT FUND OF CHICAGO'S
MOTION FOR CONSOLIDATION OF THE RELATED ACTIONS,
APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF ITS CHOICE
OF LEAD COUNSEL, AND IN OPPOSITION TO COMPETING MOTIONS**

PRELIMINARY STATEMENT

Class member Policemen's Annuity and Benefit Fund of Chicago ("Policemen") is an institutional investor which suffered the largest loss in Telik, Inc. ("Telik") of the lead plaintiff candidates. Thus, Policemen respectfully submits this memorandum in opposition to the competing motions to appoint lead plaintiff and approve lead counsel that are pending before this Court,¹ and in further support of its motion for consolidation,² appointment as lead plaintiff and for approval of its selection of Bernstein Liebhard & Lifshitz, LLP ("Bernstein Liebhard") as lead counsel for the class.

PRELIMINARY STATEMENT

Policemen should be appointed as lead plaintiff and its selection of lead counsel should be approved. Unlike the competing movants, which lack a large financial interest in the outcome of the litigation, Policemen satisfy the requirements of the Private Securities Litigation Reform Act ("PSLRA") and Fed. R. Civ. P. 23(a)(3) and (4). Policemen, having suffered a loss of over \$1.922 million, represent – by far – the largest financial interest in the outcome of the litigation, assert claims that are typical of the class and has no interests that are antagonistic to the members of the class. Thus, Policemen is presumptively the most adequate class member to serve as lead plaintiff in these actions. *See* 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I); 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

¹ Motions for appointment as lead plaintiff were also made by Richard Poole, the Mehan Group, Erste-Sparinvest, Telik Investor Group, Electrical Workers Pension Fund, Local 103, I.B.E.W., Stephen O'Grady, and ZVI Trading Corporation.

² Policemen respectfully refers the Court to its opening memorandum for the arguments in favor of consolidating the related actions.

ARGUMENT**I. POLICEMEN HAS THE LARGEST FINANCIAL INTEREST IN THIS ACTION**

The PSLRA provides that there is a “rebuttable presumption . . . that the most adequate plaintiff . . . is the person . . . that . . . has the largest financial interest in the relief sought by the class.” *See* 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I); 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). *See also* *Vanamringe v. Royal Group Techns.*, 237 F.R.D. 55, 58 (S.D.N.Y. 2006); *Gesenhues v. Checchi*, No. 05-10653 (RJH), 2006 WL 1179673, at *3 (May 3, 2006). Here, Policemen suffered the largest loss of any moving party in this litigation, \$1,922,482, on its transactions in Telik, which is over twice as large as the second largest reported loss. Indeed, Policemen’s loss dwarfs that of all other competing movants:

<u>Movant</u>	<u>Loss</u>
Policemen’s Annuity and Benefit Fund of Chicago	(\$1,922,482.06)
Richard Scott Poole	(\$876,327.25)
Mehan Group	(\$816,530.66)
Erste-Sparinvest	(\$581,141.07)
Telik Investor Group	(\$328,031.55)
Electrical Workers Pension Fund, Local 103, I.B.E.W.	(\$227,874.86)
Stephen O’Grady	(\$45,514.00)
ZVI Trading Corp.	(\$9,210.00)

The PSLRA’s presumption that the most adequate plaintiff is the person with the largest financial interest may be rebutted only upon *proof* by a class member that the presumptively most adequate plaintiff “will not fairly and adequately protect the interests of the class” or “is subject to unique defenses that render such plaintiffs incapable of adequately representing the class.” *See* 15 U.S.C. § 77z-1(a)(3)(B)(iii)(II); 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). The competing movants cannot rebut this presumption.

As set forth in its opening motion to be appointed lead plaintiff, Policemen satisfies the PSLRA, is not aware of any unique defenses that defendants could raise against it and, thus, is entitled to the presumption that it is the most adequate plaintiff for the class. Therefore, Policemen should be appointed as lead plaintiff.

II. THE COURT SHOULD APPROVE POLICEMEN'S CHOICE OF COUNSEL

Pursuant to the PSLRA, the proposed lead plaintiff shall, subject to court approval, select and retain counsel to represent the Class. *See In re Donnkenny Inc. Sec. Litig.*, 171 F.R.D. 156, 158 (S.D.N.Y. 1997). The Court should not disturb the lead plaintiff's choice of counsel unless it is necessary to "protect the interests of the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa) and 15 U.S.C. § 77z-1(a)(3)(B)(iii)(II)(aa). In that regard, Policemen request the appointment of the law firm of Bernstein Liebhard to serve as lead counsel in this case. Bernstein Liebhard has extensive experience in successfully prosecuting securities fraud actions, has frequently been appointed as lead counsel since the passage of the PSLRA, and has frequently appeared in major actions before this and other courts throughout the country. *See* Bernstein Liebhard's firm résumé, attached as Ex. 4 to the Seidman Decl.

CONCLUSION

For the foregoing reasons and the reasons given in its opening memorandum, Policemen respectfully requests that this Court: (1) consolidate the captioned, and all subsequently-filed, related actions; (2) appoint Policemen as lead plaintiff in the captioned, and all subsequently-filed, related actions; and (3) approve Policemen's selection of Bernstein Liebhard as lead counsel.

Dated: August 20, 2007

Respectfully submitted,

BERNSTEIN LIEBHARD & LIFSHITZ, LLP

/s/

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*Lead Counsel for Policemen and Proposed Lead
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the attached was served upon the following counsel of record in the actions filed this Court, First Class Mail prepaid, this 20th day of August 2007:

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/s/

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